



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0153; FRL-9995-58-Region 4]

Air Plan Approval; North Carolina: Amendments of Air Quality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), through a letter dated March 21, 2018, readopting and amending air quality rules related to transportation conformity requirements in the State of North Carolina. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0153 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web,

cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222. She can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

EPA is proposing to approve a SIP revision submitted by DAQ, through a letter dated March 21, 2018, seeking to readopt and amend the air quality rules pertaining to transportation conformity in the North Carolina SIP.¹ North Carolina's SIP submission revises the following North Carolina regulations in 15A NCAC 2D Section .2000: Section .2001 *Purpose, Scope and Applicability*, Section .2002 *Definitions*, Section .2003 *Transportation Conformity Determination*, and Section .2005 *Memorandum of Agreement*.² The changes to these rules are discussed below in Section II of this proposed rulemaking.

II. Analysis of North Carolina's Submittal

North Carolina's General Statute (G.S.) 150B-21.3A, adopted by the State in 2013, requires state agencies to review existing rules every ten years. The State recently reviewed all

¹ EPA received the official electronic version of the submittal on April 4, 2018. EPA has already taken action on the other North Carolina changes submitted through the cover letter dated March 21, 2018, in a separate action. *See* 84 FR 14308.

² The table at 40 CFR 52.1770(c), identifying the North Carolina regulations approved into the SIP, labels each rule as a "Sect." (i.e., Section) under the column titled "State citation." For consistency with the nomenclature used in the table, this notice uses the term "Section" when referring to individual North Carolina rules.

air quality rules in 15A NCAC 02D, Air Pollution Control Requirements.³ This proposed rulemaking pertains to a SIP revision that North Carolina provided to EPA for approval of changes to “Section .2000 – *Transportation Conformity*.”⁴ Section .2000 – *Transportation Conformity* contains the following five rules: Section .2001 *Purpose, Scope and Applicability*, Section .2002 *Definitions*, Section .2003 *Transportation Conformity Determination*, Section .2004 *Determining Transportation-Related Emissions*,⁵ and Section .2005 *Memorandum of Agreement*. EPA is proposing action on the following rules: Section .2001 *Purpose, Scope and Applicability*, Section .2002 *Definitions*, Section .2003 *Transportation Conformity Determination*, and Section .2005 *Memorandum of Agreement*. The changes to these rules are individually described below. If approved, none of these changes would alter the way that transportation conformity requirements are implemented in the State of North Carolina.

Section .2001 *Purpose, Scope and Applicability* is amended to revise the specific areas to which conformity requirements apply in the following manner: by removing counties and adding certain townships listed in paragraph (b); and by clarifying in paragraph (c) that transportation conformity requirements are applicable to *any* area that is designated nonattainment or has been previously designated nonattainment and since redesignated to attainment for the PM_{2.5} and ozone NAAQS.⁶

³ See North Carolina’s SIP submission, Background and Summary, at page I-1, available in the docket to this action.

⁴ Transportation Conformity is required under section 176(c) of the CAA to ensure that federally-supported highway projects, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under 175A of the CAA, for transportation-related criteria pollutants including ozone, particulate matter, and carbon monoxide and nitrogen dioxide. EPA previously approved SIP revisions from North Carolina addressing transportation conformity requirements. See 67 FR 78983 (December 27, 2002) and 78 FR 78266 (December 26, 2013).

⁵ North Carolina did not request EPA approval for Section .2004 *Determining Transportation-Related Emissions* as it was readopted without changes. See March 21, 2018, Letter from DAQ, available in the docket for this action.

⁶ See April 9, 2019 email from Matthew Davis of DAQ to Jane Spann, Acting Chief for the Air Regulatory Management Section of the U.S. EPA Region 4 Office (April 9, 2019 email), available in the docket for this proposed rulemaking. The April 9, 2019 email explains DAQ’s intent to cover all nonattainment and maintenance

Further, the changes remove provisions related to carbon monoxide areas, which were redesignated to attainment with 10-year maintenance plans effective November 7, 1994,⁷ and September 8, 1995,⁸ and previously demonstrated attainment (containing motor vehicle emissions budgets) through 2015.⁹ As federal transportation conformity requirements no longer apply to the former carbon monoxide nonattainment areas in North Carolina,¹⁰ the EPA preliminarily concludes that there are no emissions increases associated with this action.

The rule changes also provide that – in addition to stating that transportation conformity requirements apply for 20 years after an area is redesignated to attainment – transportation conformity requirements apply “until the effective date of revocation of the conformity requirements for the NAAQS by EPA.” Additionally, rule .2001 is amended to make non-substantive wording, punctuation and formatting changes.

After evaluation, EPA believes that the changes to North Carolina rule .2001, when taken together, provide the appropriate applicability for transportation conformity requirements, do not materially change the areas to which transportation conformity applies, and are consistent with the CAA requirements for applicable areas. EPA is proposing to approve the changes to rule

areas for ozone and PM_{2.5} in paragraph (c), while retaining a specific list of current nonattainment townships in paragraph (b) based on stakeholder interest. With respect to NAAQS that are relevant for conformity purposes, EPA notes that North Carolina currently has areas designated for maintenance for ozone and PM_{2.5} NAAQS.

⁷ See 59 FR 48399 (September 21, 1994) (redesignating the Winston-Salem area in Forsyth County to attainment for the carbon monoxide NAAQS and approving the first 10-year maintenance plan for the Winston-Salem area).

⁸ See 60 FR 39258 (August 2, 1995) (redesignating the Charlotte area in Mecklenburg County and the Raleigh-Durham area in Durham and Wake Counties to attainment for the carbon monoxide NAAQS and approving first 10-year maintenance plans for both areas).

⁹ See 71 FR 14817 (March 24, 2006) (approving second 10-year maintenance plans through 2015 for the Winston-Salem, Charlotte, and Raleigh-Durham carbon monoxide areas).

¹⁰ See *Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period*, October 2015, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100KPP0.PDF?Dockey=P100KPP0.PDF>. In general, transportation conformity applies for a NAAQS during the CAA section 175A maintenance planning period, which is the later of 20 years after redesignation and approval of the first 10-year maintenance plan, or the last year of a motor vehicle emissions budget established in the second maintenance plan. Those dates were November 7, 2014 (Winston-Salem area), September 8, 2015 (Charlotte and Raleigh-Durham areas), and March 18, 2015 (last year of motor vehicle emissions budget for all three areas).

.2001 because these changes do not alter the applicability for transportation conformity requirements in North Carolina nor do these changes conflict with the federal requirements for transportation conformity.¹¹

Section .2002 *Definitions* is amended to remove the definition of consultation, and to make non-substantive wording, punctuation and formatting changes (for example, to include hyphens between the words regionally and significant). EPA is proposing to approve the changes to rule .2002 because these changes, including the deletion of the definition of consultation,¹² do not alter transportation conformity requirements for any applicable area in North Carolina nor do these changes conflict with the federal requirements for transportation conformity.

Section .2003 *Transportation Conformity Determination* is amended to update references to federal transportation conformity requirements from 40 CFR 93.109 through 93.119 as opposed to referencing the federal transportation conformity requirements from 40 CFR 93.109 through 93.118;¹³ to clarify that written commitments to implement control measures must be obtained if a control measure is not included in either the transportation plan or the transportation improvement program; and to make non-substantive wording, punctuation and formatting changes. EPA is proposing to approve the changes to rule .2003 because these changes do not

¹¹ See, e.g., 40 CFR § 51.390; 40 C.F.R. Part 93 Subpart A; Transportation Conformity Guidance for the South Coast II Court Decision, dated November 2018, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100VQME.pdf>.

¹² EPA notes that consultation process requirement to comply with 40 CFR 93.105 were approved into the SIP within memoranda of agreements addressing transportation conformity. See 67 FR 78986 (December 27, 2002).

¹³ As 40 CFR 93.119 contains provisions for areas without a motor vehicle emissions budget approved in the SIP, this provision is not required to be in the SIP and would be applicable to such areas absent its inclusion into the SIP. See 77 FR 14979 (March 14, 2012). However, North Carolina has chosen to submit this provision for inclusion into the SIP, and as inclusion of this provision is not inconsistent with federal transportation conformity requirements or the CAA, EPA is proposing to approve this provision into North Carolina's federally approved SIP.

alter transportation conformity requirements for any applicable area in North Carolina and these changes are consistent with the federal transportation conformity requirements.

Section .2005 *Memorandum of Agreement* is amended to provide a more general reference to rule .2001 instead of referencing specific subsections in rule .2001, and to make non-substantive wording, punctuation and formatting changes. EPA is proposing to approve the changes to rule .2005 because these changes do not alter transportation conformity requirements for any applicable area in North Carolina and these changes are consistent with the federal transportation conformity requirements.

In summary, EPA views the amendments described above as consistent with the federal transportation conformity requirements and the Clean Air Act, and is proposing to approve these rules, as amended, into the North Carolina SIP.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following air quality rules in 15A NCAC subchapter 2D.: Section .2001 *Purpose, Scope and Applicability*, Section .2002 *Definitions*, Section .2003 *Transportation Conformity Determination*, and Section .2005 *Memorandum of Agreement*, state-effective January 1, 2018. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

For the reasons explained above, EPA is proposing to approve North Carolina's March 21, 2018, SIP revision, which amends and readopts rules 15A NCAC subchapter 2D.: .2001, .2002, .2003, and .2005, for inclusion into North Carolina's SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, if they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 28, 2019.

Mary S. Walker,
Regional Administrator,
Region 4.

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